

1

2

3

4

5

6

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7

8

DAVID KUZNETSOV,

10 Petitioner,

CASE NO. C07-858-MJP-MAT

11 v.

12 NEIL CLARK, et al.,

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER

13 Respondents.

14

15 Petitioner David Kuznetsov, proceeding through counsel, has filed a Motion for Temporary
16 Restraining Order and Order for Release From Custody, requesting that the Court issue a temporary
17 restraining order (“TRO”) preventing his transfer out of this jurisdiction and preventing the U.S.
18 Immigration and Customs Enforcement (“ICE”) from holding him in detention without bond.

19 The basic function of a preliminary injunction is to preserve the *status quo ante litem*
20 pending a determination of the action on the merits. *Los Angeles Memorial Coliseum Comm'n v.*
21 *National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). In determining whether to grant
22 a temporary restraining order or a preliminary injunction, the Ninth Circuit considers: (1) the
23 likelihood of success on the merits; (2) the possibility of irreparable injury to plaintiff if an injunction

24

25 ORDER DENYING MOTION FOR
26 TEMPORARY RESTRAINING ORDER
PAGE - 1

1 is not granted; (3) the extent to which the balance of hardships favor plaintiff; and (4) whether the
2 public interest will be advanced by the injunction. *See, e.g., Los Angeles Mem'l Coliseum Comm'n,*
3 634 F.2d at 1200. The analysis is often compressed into a single continuum where the required
4 showing of merit varies inversely with the showing of irreparable harm. *See Prudential Real Estate*
5 *Affiliates, Inc. v. PRP Realty, Inc.*, 204 F.3d 867, 874 (9th Cir. 2000). The moving party may meet
6 its burden by demonstrating either: (1) a probability of success on the merits and the possibility of
7 irreparable injury; or (2) that serious legal questions are raised and the balance of hardship tips
8 sharply in petitioner's favor. *Los Angeles Mem'l Coliseum Comm'n*, 634 F.2d at 1201.
9

10 The Court finds that petitioner does not satisfy either standard. Petitioner asserts that "ICE
11 officers intend to send [him] to a prison in Alabama to be held pending removal proceedings." (Dkt.
12 #2 at 2). Petitioner "requests this Court to issue a temporary restraining order preventing his
13 transfer out of this jurisdiction." (Dkt. #2 at 2 and 9). Aside from this request for relief, petitioner
14 provides no argument or legal authority showing that the Court has any basis or authority to enter
15 such relief. Petitioner also claims that the Department of Homeland Security ("DHS") and the
16 Immigration Judge have wrongfully refused to establish a bond amount because he has been deemed
17 to be an "arriving alien." (Dkt. #2 at 3). Petitioner claims that he is not an "arriving alien" and that
18 he is entitled to release from detention pursuant to INA § 236(a), 8 U.S.C. § 1226(a). However,
19 there is insufficient evidence in the record currently before the court to conclude that petitioner is
20 not an arriving alien or that he is entitled to release from detention pursuant to INA § 236(a).
21 Despite the harm which petitioner is and will continue to suffer during his detention, he has not
22 raised serious questions regarding his entitlement to relief, much less shown a probability of success
23 on the merits. In such circumstances, equitable relief is inappropriate. Plaintiff's motion for
24

25 ORDER DENYING MOTION FOR
26 TEMPORARY RESTRAINING ORDER
PAGE - 2

1 temporary restraining order is therefore DENIED.

2 DATED this 6th day of June, 2007.

3
4
5
6



7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Marsha J. Pechman
U.S. District Judge

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER
PAGE - 3